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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,870	07/14/2000	Wallace J. Beaudry	8115-12394A-PCT US DIV2	6042

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EXAMINER	
LEWIS, KIM M	

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/616,870	Applicant(s) BEAUDRY, WALLACE J.
	Examiner Kim M. Lewis	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 September 2003 and 03 November 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *33-40,42-54,106-118,120-122 and 124-138* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *33-35,43-46,106-117 and 126* is/are allowed.

6)☒ Claim(s) *36-40,42,47-54,118,120,124,125 and 127-138* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *34*.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *Detailed Action*.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/25/03 has been entered.

In the submission, amendment H, the applicant has amended claim 48 and added new claims 128-138.

Information Disclosure Statement

The information disclosure statement filed 11/3/03 has been received and made of record in the application file wrapper. Note the acknowledged form PTO-1449 enclosed herewith.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 36-40, 118, 127-131 and 133 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,534,010 ("Peterson").

As regards claims 36, 118 and 127, Peterson discloses all features of the claim including first, second and third elastic sections and 1st and 2nd linear margins. Note the marked-up front page of the Peterson reference attached hereto. Also note col. 3, lines 56-34. The applicant should note that although the first, second and third sections are distinct; they are joined together so as to constitute a one-piece construction. Note the enclosed Marked up drawings.

Moreover, the applicant should note that Webster's II New Riverside Dictionary defines a margin as an edge and the area adjacent to it. Note attached Exhibit A.

As regards claims 37-40 and 128-131, note the openings in the second section, which are of a predetermined shape, size, and are spatially oriented (Fig. 1).

As regards claim 133, the second section of Peterson is capable of contacting a wound surface.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> **(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.**

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 42, 47, 49,120-122,124, 125 and 132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson.

As regards claims 42 and 132, Peterson fails to teach the second section comprises a laminated material comprising three layers. Absent a critical teaching and/or a showing of unexpected results derived from constructing the first and third sections from a laminated material comprising three layers, the examiner contends that the use of such a laminated material for the first and third sections is an obvious design choice, which does not patentably distinguish applicant's invention.

As regards claim 47, Peterson is silent as to the transparency of the first and second sections. However, the examiner contends that one having ordinary skill in the at would have found it within the level of ordinary skill in the art to provide the first and third sections (adhesive tape sections 24 and 26) in transparent form since it is well known in the art that adhesive tape is manufactured in transparent form. Such a modification requires limited skill in the art.

As regards claim 49, the second section includes a first side and a second side, of which the second side contacts a wound (Fig. 5).

As regards claims 120-122, note the rejection of claims 37-40 *supra*.

As regards claims 124 and 125, note the rejection of claims 36 and 42 *supra*.

Claims 50-54 and 134-138 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of U.S. Patent No. 5,234,462 ("Pavletic").

As regards claim 50, Peterson fails to disclose that the second section comprises a medicinal material.

Pavletic, however, discloses a wound closure device having a second section used with or without a dressing for application to a wound site. Although Pavletic fails to teach a medicinal material applied to the wound dressing, one having ordinary skill in the art would have been motivated to apply a medicinal material to the dressing in order to treat the wound site. Such a modification requires only routine skill in the art.

In view of Pavletic, it would have been obvious to one having ordinary skill in the art to provide the wound closure device of Peterson with a dressing having a medicinal material applied thereto in order to treat the wound site. Such a dressing would be applied underneath the second section and would therefore be a part of the second section.

As regards claims 51-54, the examiner contends that the use of any medicinal material including zinc chromate impregnated in a hydrocolloid

material, calcium alginate or sodium alginate would have been within the skill of the art.

As regards claims 134-138, note the rejections to claims 50-54 above.

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson in view of U.S. Patent No. 5,449,340 ("Tollini").

As regards claim 48, Peterson substantially discloses all features of the claim except a wound irrigation device. However, Tollini teaches it is known to provide wound dressings with wound irrigation devices (Fig. 16) in order to drain a wound. In view of Tollini, it would have been obvious to one having ordinary skill in the art to modify Peterson with the addition of a wound irrigation device in order to drain a wound.

Allowable Subject Matter

Claims 33-35, 43-46 and 106-117 are allowed.

The indicated allowability of claim 48 is withdrawn in view of the reference issued to Tollini.

Response to Arguments

Applicant's arguments filed 9/25/03 have been fully considered but they are not persuasive. In response to the arguments presented, the applicant should note that the examiner defines the section as all portions of the filaments including the margin to which the filaments are attached. The examiner has also

provided the applicant with a copy of a definition of margin in Exhibit A. This definition clearly shows how the claimed margins read on the margins of the device of Peterson as outlined by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Monday to Wednesday from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703.308.1957. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.0858.

Kim M. Lewis
Primary Examiner
Art Unit 3761

Kml
November 29, 2003